

Exhibit 30

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANTHONY BAFFO,

Plaintiff, Index No.
10 Civ 1245
-against- (LDW) (ETB)

NEW YORK INSTITUTE OF TECHNOLOGY;
ROBERT RIZZUTO, in his official and
individual capacities; and LEONARD
AUBREY, in his official and individual
capacities,

Defendants.

-----X
February 25, 2011
10:00 a.m.

Deposition of CAROL JABLONSKY, held at
the offices of Thompson Wigdor & Gilly LLP, 85
Fifth Avenue, New York, New York, pursuant to
Notice, before Lynne D. Metz, a Shorthand Reporter
and Notary Public of the State of New York.

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2 APPEARANCES:

3
4 THOMPSON WIGDOR & GILLY LLP
5 Attorneys for Plaintiff
6 85 Fifth Avenue
7 New York, New York 10003
8 BY: GREGORY N. FILOSA, ESQ.,
9 and
10 MATTHEW GORMAN, ESQ.,
11 of Counsel
12

13 FULBRIGHT & JAWORSKI L.L.P.
14 Attorneys for Defendants
15 666 Fifth Avenue
16 New York, New York 10103
17 BY: NEIL G. SPARBER, ESQ.,
18 of Counsel
19

20
21 ALSO PRESENT:

22 Anthony Baffo
23
24
25

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2 IT IS HEREBY STIPULATED, by and between the
3 attorneys for the respective parties hereto, that:
4 All rights provided by the C.P.L.R., and Part 221
5 of the Uniform Rules for the Conduct of
6 Depositions, including the right to object to any
7 question, except as to form, or to move to strike
8 any testimony at this examination is reserved; and
9 in addition, the failure to object to any question
10 or to move to strike any testimony at this
11 examination shall not be a bar or waiver to make
12 such motion at, and is reserved to, the trial of
13 this action.

14

15 This deposition may be sworn to by the witness
16 being examined before a Notary Public other than
17 the Notary Public before whom this examination was
18 begun, but the failure to do so or to return the
19 original of this deposition to counsel, shall not
20 be deemed a waiver of the rights provided by Rule
21 3116 of the C.P.L.R. and shall be controlled
22 thereby.

23

24 The filing of the original of this deposition is
25 waived.

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Q. The information that's contained on here, did you have a meeting with someone before this was presented to you or you discussed the same topics that are outlined on this?

A. I would have had a conversation with the general counsel regarding this and that information would have been shared with outside counsel.

Q. Was anyone else present for this conversation that you had with Mr. Kloepfer that preceded this affidavit?

A. I don't know when this was specifically created, but there was not one conversation to create this one document.

Q. But this was signed by you on November 12, 2009?

A. Yes.

Q. And do you know why this was provided to the New York State Division of Human Rights?

A. I would say it was in response to providing information for the complaint.

Q. And you reviewed this before you signed it?

A. Yes.

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Q. Was everything contained in this affidavit true and accurate at the time you signed it?

A. Yes.

Q. And the information here is true and accurate as the information you are testifying to today?

A. Yes.

Q. And the information here you understood that it was important to make sure that the information in this affidavit was true and accurate; correct?

A. Yes.

Q. Because you were providing it to the New York State Division of Human Rights?

A. Yes.

Q. As part of their investigation of a complaint that Mr. Baffo had made; is that correct?

A. Yes.

Q. But when you reviewed this you don't recall making or suggesting any changes to the content of the affidavit?

A. No. I don't recall making any

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changes.

MR. FILOSA: Let's take a short break.
(Recess taken.)

BY MR. FILOSA:

Q. Referring back to Jablonsky Exhibit 1, I want to direct your attention to the first paragraph. You indicate you began your employment with NYIT on Tuesday October 13, 2009?

Is that correct?

A. Yes.

Q. And skipping to the next sentence you say: On Friday October 16, 2009 at the request of Len Aubrey, NYIT's chief financial officer and treasurer, I met with Mr. Aubrey and with Robert Rizzuto, NYIT's Director of Dining Services, to discuss their areas of concern.

Do you see that?

A. Yes.

Q. And this meeting with Mr. Aubrey and Mr. Rizzuto on October 16, 2009, was this the first time you met with them?

A. Yes.

Q. And it says it was at the request of Len Aubrey.

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Did Mr. Aubrey request that you meet with them? Did Mr. Aubrey request that you meet with him and Mr. Rizzuto?

A. What was happening during my first week is that I was to meet with all of the vice-presidents if possible. He chose that date and that time.

Q. So when you say at the request of Len Aubrey, you are referring just to the date and time of the meeting?

A. Yes, yes.

Q. Because you were scheduled to meet with him, he was the vice-president of NYIT?

A. Yes.

Q. And why were you meeting with all the vice-presidents?

A. As the new Director of Human Resources it was important to me to know the senior players at NYIT.

Q. And was this your idea or was it someone above you's idea to meet with all the VPs?

A. It was not my idea. It was set up for when I came in. Whose idea it was I don't know.

Q. As the Director of HR you report to

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Stephen Kloepfer?

A. Yes.

Q. And he is the general counsel?

A. Yes.

Q. Do you report to anyone else?

A. Not directly.

Q. Do you indirectly report to anyone?

A. Well, through Stephen up to Edward

Guiliano.

Q. Who is Mr. Guiliano?

A. He is the president of NYIT.

Q. And the spelling of his last name is G

A. G-U-I-L-I-A-N-O.

Q. And you met with Mr. Aubrey and Mr. Rizzuto on October 16, 2009 you indicated to discuss their areas of concern.

What do you mean by that?

A. The meeting was set up with each of the vice-presidents as an introduction and to see what was going on in their areas. What they might ask of human resources.

Q. And had Mr. Aubrey or Mr. Rizzuto discussed any areas of concern that they might

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have before that meeting?

A. No. That was my very first introduction to Mr. Aubrey and I didn't even know that Robert Rizzuto was going to be at that meeting.

Q. Was Mr. Rizzuto there for the whole meeting?

A. Yes, with me. It appears he had been there beforehand.

Q. So when you arrived at the meeting Mr. Rizzuto and Mr. Aubrey were already together in presumably Mr. Aubrey's office?

A. Yes.

Q. Do you know whether or not they had been meeting before your meeting?

A. I don't know, but he was not waiting with me prior to the meeting. So he arrived before me.

Q. Where were you waiting prior to the meeting?

A. The way that office is set up is that there is sort of a front office with his administrative assistant and someone that works for another area and then his office is over to

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the side. So I was in that front area and when I walked into Len Aubrey's office the two of them were sitting at the conference table in his office.

Q. Were you waiting long for Mr. Aubrey?

A. No.

Q. But when you got there -- strike that.

Did you wait for any period of time?

A. Just long enough for the

administrative assistant to let him know that I was there.

Q. And then you went in and Mr. Rizzuto and Mr. Aubrey were already there?

A. Yes.

Q. And you hadn't had any discussions with Mr. Aubrey prior to that meeting?

A. No.

Q. And how long was the meeting with Mr. Aubrey and Mr. Rizzuto?

A. I don't recall specifically, but I would say probably around 45 minutes.

Q. What did you and Mr. Aubrey and Mr. Rizzuto discuss during this meeting?

A. The structure of his area. He is the

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chief financial officer and has a number of different groups underneath him, one of which is dining services with Robert Rizzuto and then they proceeded to explain to me that they were doing the reorganization.

Q. Now you say that they indicated that they were doing a reorganization.

What specifically did they say about the reorganization?

A. They said that they had been working on this reorganization for a while and that because there was no human resources director in the interim between when the former moved over to the global side and my arrival, they were waiting for me to arrive to discuss this action.

Q. Now you say they said they were working on this for a while.

Did they say anything other than that, that they were working on this for a while? I am trying to get an understanding as to what they meant by they had been working on this for a while, to the extent you know.

A. I didn't get specific dates. They spoke about some of the financial reasons for it

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1 and that they were looking to hire some other
2 people in place of Mr. Baffo.

3 Q. What were the financial reasons that
4 they discussed?

5 A. They were not specific other than
6 Robert Rizzuto felt that he could do better with a
7 reorganization versus the current status.

8 Q. What do you mean by financial reasons?

9 A. NYIT is a not for profit and many of
10 the areas don't focus on bottom line dollars and
11 cents. Robert Rizzuto's areas truly do look at
12 budget, finance, bottom numbers, gains, losses.
13 So he was talking about his overall position
14 financial.

15 Q. What did he say? How did this
16 reorganization that they were planning play? How
17 did it address these financial concerns that he
18 had had?

19 A. They didn't share that --

20 Q. To the extent you know.

21 A. They didn't share that with me
22 specifically. We didn't discuss any numbers.

23 Q. So what specifically did Mr. Rizzuto
24 say about the reasons for the reorganization?

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1 A. At that meeting Len Aubrey did most of
2 the talking.

3 Q. What did Mr. Aubrey say about the
4 need, the reasons for the reorganization?

5 A. Very generally, that it was financial
6 in nature and that they were looking to reorganize
7 to help the position.

8 Q. Do you recall him saying anything
9 else?

10 A. Regarding what aspect?

11 Q. Regarding the reasons for the
12 reorganization other than the financial nature and
13 looking to reorganize to help the position.

14 A. No. I only remember financial.

15 Q. Did they discuss Mr. Baffo's
16 performance during this meeting?

17 A. No.

18 Q. Did you discuss any other areas of
19 concern for Mr. Aubrey or Mr. Rizzuto other than
20 the reorganization of the de Seversky Center?

21 A. Nothing that I remember specifically
22 because this conversation regarding the
23 reorganization was the last topic of the meeting.

24 Q. What other topics were discussed at

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1 the meeting?

2 A. As I said, at the meeting general
3 organization structure and things like that. If
4 anything else was mentioned it was not important.

5 Q. Did any of these other topics pertain
6 to Mr. Rizzuto?

7 A. No.

8 Q. So he didn't need to be at the meeting
9 for those other topics?

10 A. No.

11 Q. Did they say during this meeting when
12 they began discussing this plan to reorganize the
13 de Seversky Center?

14 A. Not specifically.

15 Q. Did either Mr. Aubrey or Mr. Rizzuto
16 indicate whose plan it was?

17 A. No. Not at that time nothing was said
18 regarding the genesis of this plan.

19 Q. But you had talked a little bit
20 earlier that Mr. Rizzuto had indicated that he
21 felt he could do better from a financial
22 standpoint with the reorganization?

23 A. Right.

24 Q. So did you have any understanding as

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1 to whether or not it was Mr. Rizzuto that had come
2 up with a plan or Mr. Aubrey?

3 A. No. They spoke as a unit. They were
4 both on the same page.

5 Q. And did they say how -- let me direct
6 your attention to paragraph 3 on page 2.

7 A. Okay.

8 Q. You indicate: During this meeting
9 they spoke about plans they have been developing
10 to reorganize the management at the de Seversky
11 Conference Center on NYIT's Old Westbury Long
12 Island campus.

13 My question is: Did they discuss how
14 management would be reorganized as part of this
15 reorganization?

16 A. I remember they mentioned names, but
17 because it was the third, fourth day I didn't have
18 any context. I don't remember.

19 Q. Do you know whether or not their
20 plans -- but you do remember they talked about
21 eliminating Mr. Baffo's position?

22 A. Yes.

23 Q. Do you know what his position was at
24 that time?

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 2 A. No. Not specifically. Just that it
 3 was a management position and it was being
 4 replaced by lower level positions.
 5 Q. Do you know whether or not they had
 6 discussed eliminating any other positions other
 7 than Mr. Baffo's position?
 8 A. Not with me at that time.
 9 Q. So basically your understanding -- is
 10 it fair to say that your understanding of the plan
 11 was to eliminate Mr. Baffo's position and replace
 12 it with more than one or a number of other lower
 13 level positions?
 14 A. That was the part that I was involved
 15 in.
 16 Q. And what was your understanding at
 17 that meeting as to how that would improve the de
 18 Seversky Center's financial position?
 19 A. That was not part of the meeting.
 20 Q. Did Mr. Rizzuto say anything about how
 21 eliminating this position would improve the de
 22 Seversky Center's financial position?
 23 A. Not specifically to me, no.
 24 Q. Now at the time were there any other
 25 layoffs or restructuring at NYIT?

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 2 A. Not at that time that I was aware of.
 3 Q. Was there a restructuring or layoffs
 4 at another time that you are aware of?
 5 A. I have been told that there was a
 6 restructuring. That was truly a layoff over the
 7 summer and it was university wide in a number of
 8 different areas.
 9 Q. And do you know whether or not there
 10 was any layoffs or reduction in force at the de
 11 Seversky Center? And when you say the summer, you
 12 are talking about the summer of 2009?
 13 A. Yes.
 14 Q. Do you know whether or not there were
 15 any layoffs or reduction in force at the de
 16 Seversky Center in the summer of 2009?
 17 A. No. I didn't see a list.
 18 Q. When you say that was truly a layoff,
 19 what do you mean?
 20 A. That the way it was explained to me is
 21 that they were eliminating positions.
 22 Q. And that was university wide?
 23 A. Yes.
 24 Q. So the university had given some
 25 instruction to different departments and divisions

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 2 about eliminating positions or expenses from the
 3 budget?
 4 A. That happened prior to me. I don't
 5 know.
 6 Q. What was your understanding of that
 7 layoff process?
 8 A. I did not get into the reasons for it
 9 from a human resources perspective. I just knew
 10 about it from a practice of what have we done in
 11 the past kind of thing.
 12 Q. But you knew that was a university
 13 wide layoff?
 14 A. Yes.
 15 Q. But you don't know whether or not
 16 there was also a layoff at the de Seversky Center
 17 as part of that university wide layoff?
 18 A. I don't know who was involved in that
 19 layoff. So no, I don't know.
 20 Q. Now this restructuring that Mr.
 21 Rizzuto and Mr. Aubrey were talking about, that
 22 was not part of a university wide layoff?
 23 A. No. That was an independent action as
 24 far as I am aware.
 25 Q. So you are not aware of the

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 2 instruction from -- strike that.
 3 Who did Mr. Aubrey report to?
 4 A. He reports directly to the president
 5 Edward Giuliano.
 6 Q. Are you aware of any instruction from
 7 Mr. Giuliano with respect to eliminating staff or
 8 budget in conjunction with this reorganization
 9 that Mr. Aubrey and Mr. Rizzuto were discussing?
 10 A. I am not aware of any.
 11 Q. So you don't know if Mr. Rizzuto or
 12 Mr. Aubrey were asked to eliminate positions or
 13 reduce head count or cut expenses?
 14 A. No, I don't know.
 15 Q. Now going on to the second sentence in
 16 paragraph 3 you say: Part of the plan was to
 17 eliminate the general manager position then
 18 occupied by Anthony Baffo and divide most of the
 19 general manager duties between two existing
 20 positions (Robert Rizzuto, Director of Dining
 21 Services and Eric Redlich, Manager Catering
 22 Sales).
 23 You indicate at the start of that that
 24 part of the plan was to eliminate his position.
 25 What other parts of this plan were discussed at

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2 this meeting?

3 A. Not with me. How that was to
4 specifically play out I don't know. I know
5 that -- that's the next sentence.

6 Q. But what I am trying to get an
7 understanding of is: Are there other parts of the
8 plan other than eliminating the general manager
9 position?

10 A. Yes.

11 Q. What were those parts of the plan?

12 A. As far as I know it was the lower
13 level employees who were going to be hired to fill
14 in certain gaps.

15 Q. So the entire plan was to eliminate
16 the general manager position and hire other lower
17 level positions to fill in those gaps?

18 A. What I understood from that meeting
19 was the general manager's position would be
20 eliminated. Part of that work would go to other
21 senior managers and part would go to lower level
22 employees.

23 Q. Was there any discussion as to these
24 new -- strike that.

25 These lower level positions, were they

1 C. Jablonsky

2 preexisting or were they new positions; was there
3 any discussion of that?

4 A. Not specifically. No.

5 Q. Was there any discussion what the
6 salary of these positions would be?

7 A. No.

8 Q. Any discussion of what the benefits of
9 these positions would be?

10 A. No.

11 Q. Any discussion of whether or not there
12 would be any increase in the senior positions that
13 would take on additional duties as part of the
14 elimination of the GM position?

15 A. When you say increase you mean
16 financial?

17 Q. Yes.

18 A. Not that I am aware of.

19 Q. Anything non-financial that would
20 increase as a result of that?

21 A. The amount of work that they needed to
22 take on.

23 Q. But their compensation?

24 A. No.

25 Q. No, that wasn't part of the plan or

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2 no, there was no discussion at that meeting?

3 A. There was no discussion of that and as
4 far as I am aware there was no plan for that.

5 Q. Now you go on in the next sentence to
6 say: In anticipation of that action NYIT had
7 already started recruiting for two lower level
8 employees and you designated dining room captain
9 and sales associate position. You say would round
10 out the balance of the work that would need to be
11 done following the elimination of the GM position.

12 Do you see that?

13 A. Yes.

14 Q. And what do you mean when you say in
15 anticipation of that action?

16 A. In anticipation of eliminating the
17 general manager's position and sharing that. NYIT
18 had started to already recruit for the lower level
19 employees who were also part of this overall plan.

20 Q. So did you have any understanding as
21 to whether or not -- strike that.

22 These positions were already being
23 recruited for at the time?

24 A. That's what I learned afterwards. I
25 hadn't started until October 13th, so I didn't

1 C. Jablonsky

2 know that at the time.

3 Q. Did Mr. Rizzuto or Mr. Aubrey say
4 anything at this meeting about having already been
5 recruiting for these positions?

6 A. It was maybe half a sentence because
7 we were focused on the more senior parts of it.

8 Q. What do you mean when you say focused
9 on the more senior parts of it?

10 A. The elimination of the general
11 manager, the distribution of the duties with that
12 reorganization.

13 Q. What do you mean when you say the
14 distribution of the duties?

15 A. Between Robert Rizzuto and Eric.

16 Q. Eric Redlich?

17 A. Yes. I am sorry.

18 Q. Was there any discussion at this
19 meeting about what duties would be assigned to --
20 strike that.

21 Was there any discussion at this
22 meeting about what duties Mr. Rizzuto would take
23 on as part of the elimination of the general
24 manager position?

25 A. Not that I recall, but again, as it

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2 was my first few days I wouldn't have understood
3 necessarily a specific name or title at that
4 point.

5 Q. Now you had said you subsequently
6 learned that they had been -- strike that.

7 You said you had subsequently learned
8 that NYIT had been recruiting for these two lower
9 level positions prior to your employment and prior
10 to your meeting with Mr. Rizzuto and Mr. Aubrey;
11 is that correct?

12 A. Yes.

13 Q. And what did you learn about -- strike
14 that.

15 What was your understanding of these
16 positions and the recruitment that had gone on up
17 to that point?

18 A. What I understood was that this
19 overall plan had already been put into place and
20 that they were looking to fill those lower level
21 positions.

22 Q. What had been done to put this overall
23 plan into place?

24 A. It was prior to my joining. I don't
25 know.

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2 Q. But what did you subsequently learn
3 had been done to put this into place prior to your
4 joining or the meeting?

5 A. What I know is that they were looking
6 to hire these positions. Specifically how that
7 was done I don't know.

8 Q. But are you aware of anything that was
9 done other than starting to recruit for these two
10 positions?

11 A. No.

12 Q. What was your understanding as to what
13 when these positions had I guess -- strike that.

14 What is the process if someone at
15 NYIT, if a department wants to hire a new
16 employee, is there a procedure they have to go
17 through?

18 A. There is nothing a hundred percent set
19 in stone. Different areas of the university do it
20 differently. So there is no one procedure in
21 place for that.

22 Q. Do you have any understanding of what
23 the procedure is in place for the de Seversky
24 Center?

25 A. Not at all levels of the organization.

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2 HR is involved in the more senior levels of the
3 organization.

4 Q. But in order to recruit for a
5 position, does HR need to -- strike that.

6 If the de Seversky Center wanted to
7 recruit for a position, do they need to obtain
8 approval from HR or anyone else within the
9 organization?

10 A. There is no hard and fast policy on
11 that. HR is available to help, but when it comes
12 down to certain positions, especially the lower
13 level positions, HR may or may not be involved.

14 Q. Do you know whether HR was involved, I
15 understand this is prior to your time, but do you
16 know whether HR was involved in recruiting for
17 these two lower level positions, the dining room
18 captain position and the sales associate position?

19 A. No, I don't.

20 Q. Did you do anything to look into what,
21 whether or not HR had any involvement in
22 recruiting for these two positions?

23 A. No.

24 Q. You indicate that NYIT had already
25 started recruiting for two lower level employees.

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2 What was your understanding of what
3 NYIT had done to start recruiting?

4 A. I had been told they had started to
5 recruit and I know that ads had been placed asking
6 for candidates, but I didn't go further than that.

7 Q. And who told you that; who told you
8 that they had begun recruiting?

9 A. That was Robert and Len.

10 Q. And was that in that meeting with them
11 on the 19th of October?

12 A. I don't recall if it was at that
13 meeting.

14 Q. Strike that, I apologize. That was
15 the 16th of October.

16 A. The dates, I don't recall if it was at
17 that meeting or at a subsequent time.

18 Q. But at some point either Len Aubrey or
19 Robert Rizzuto told you that they already had been
20 recruiting for those two positions?

21 A. Yes.

22 Q. Did you ever look up the recruitment
23 -- strike that.

24 There is something, a form or
25 procedure that NYIT uses that's known as an RA?

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Q. Do you know did they indicate whether or not -- strike that.

Were there any approvals that would be required in order to put into place a reorganization?

A. I didn't know what the policies of NYIT was on that Friday.

Q. Have you subsequently learned whether or not any approvals were required for a reorganization either within the de Seversky Center or just generally within NYIT?

A. I learned what NYIT's practices are regarding that.

Q. What are NYIT's practices regarding that?

A. The general way these things happen is that within the business unit a decision is made regarding structure, organization, number of positions. That type of thing. The vice-president of that area needs to approve that plan. At that point it comes to human resources and we put the documentation together in meeting that approval and any supporting documentation they may wish to provide. Show that to the

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general counsel. General counsel would either ask questions or agree and then HR would implement taking whatever actions are necessary whether it's termination of employment, something called a COS, change of status, to move someone into a different position, a different location. That type of thing.

Q. So generally it starts though with the business unit and the vice-president of the business unit approving it?

A. Yes.

Q. You indicated you subsequently learned what the practice was.

When did you learn? Do you recall when you learned what the practice was for the reorganization at NYIT?

A. Sometime after the meeting with Len on Friday and before the meeting with Robert on Monday.

Q. And did you have any understanding at that meeting with Mr. Aubrey and Mr. Rizzuto whether or not Mr. Aubrey had already approved the reorganization from -- I guess he was the vice-president of the business unit; right?

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A. Yes.

Q. Do you know whether he approved the reorganization on his end?

A. He spoke about it as a done deal. So without formally saying the words I approve this reorganization, he was the one presenting it to me for implementation.

Q. And did you have an understanding as to -- was your expectation he approved it prior to that meeting, I mean prior to the October 16th meeting?

A. When you say my expectation?

Q. Your understanding, the way he was talking about it and it was presented to you as a done deal and already had been approved, did you get the sense that it was something that he had approved days or weeks prior to the meeting or was it something that had been done just on the day of the meeting?

A. The conversations were all past tense. It sounded like this had been decided a while ago.

Q. Now going on paragraph 4 you indicate: That you met with Robert Rizzuto on Monday October 19th in order to get details of the planned

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C. Jablonsky

action, a memo outlining the changes and new organization charts.

Do you see that?

A. Yes.

Q. Now whose idea was it to meet with Mr. Rizzuto on October 19th?

A. It was my idea at the Friday meeting that I needed to gather information and then get back in touch because I couldn't answer questions about implementation because I didn't know NYIT's policies, practices.

Q. And at this meeting did you -- strike that.

Prior to this meeting on Monday October 19th did you discuss with Mr. Rizzuto -- you say get details of the planned action, a memo outlining changes in the new organization charts.

Did you ask him to provide those at that meeting?

A. No. That is what was discussed at the meeting.

Q. That was what was discussed at the October 19th meeting?

A. Yes.

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1 C. Jablonsky
2 Q. Did Mr. Rizzuto provide you with a
3 memo outlining the changes or new organizational
4 charts prior to the October 19th meeting?
5 A. No. I hadn't asked for them.
6 Q. Did you ask for them at that meeting?
7 A. Yes.
8 Q. Why did you ask for these, the memo
9 and the organizational charts at the meeting?
10 A. Because I found out that was the
11 documentation NYIT would like to have before
12 implementing this action.
13 Q. Do you know whether or not those
14 documents had been prepared prior to that meeting?
15 A. I don't know firsthand.
16 Q. Is it your understanding that he
17 provided these to you after that meeting?
18 A. Yes.
19 Q. Do you know when your meeting with Mr.
20 Rizzuto was on the 19th?
21 A. I don't recall what time of day.
22 Q. Do you know where the meeting was?
23 A. My office.
24 MR. FILOSA: Let's mark this as
25 Jablonsky Exhibit 2 please.

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1 C. Jablonsky
2 (Jablonsky Exhibit 2, information
3 regarding a meeting Bates stamped D03273,
4 marked for identification, as of this date.)
5 Q. Please look at what is Jablonsky
6 Exhibit 2.
7 A. I did.
8 Q. Do you recognize this?
9 A. Yes.
10 Q. What is it?
11 A. It's information regarding a memo, a
12 meeting that I set up from my calendar.
13 Q. Is that the October 19th meeting with
14 Mr. Rizzuto?
15 A. Yes.
16 Q. And does it indicate what time it was?
17 A. Yes, it does.
18 Q. What time is it?
19 A. 2:30.
20 Q. Did you meet with Mr. Rizzuto on more
21 than one occasion that day the 19th?
22 A. I don't recall.
23 Q. So is it your understanding that the
24 meeting occurred at 2:30 on the 19th?
25 A. Yes.

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2 C. Jablonsky
3 MR. FILOSA: Please mark this as
4 Jablonsky Exhibit 3.
5 (Jablonsky Exhibit 3, a two-page
6 document Bates stamped D 03307 through 08,
7 marked for identification, as of this date.)
8 Q. The court reporter is showing you what
9 has been marked as Jablonsky Exhibit number 3. It
10 is a two-page document Bates stamped D 03307 to
11 through 08.
12 A. Yes.
13 Q. Have you seen this document before?
14 Strike that.
15 This is an e-mail with an attachment;
16 is that fair to say?
17 A. Yes.
18 Q. And it is an e-mail from Robert
19 Rizzuto to you dated October 19, 2009?
20 A. Yes.
21 Q. Sent at 7:48 in the morning?
22 A. Yes.
23 Q. Do you recall receiving this e-mail?
24 A. Not specifically.
25 Q. There is an organizational chart
attached that is headed Food Services Staffing

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1 C. Jablonsky
2 Chart.
3 Do you recognize that?
4 A. I have seen it before.
5 Q. This doesn't pertain to the de
6 Seversky Center or does it?
7 A. No.
8 Q. So the food services staffing is a
9 separate -- strike that.
10 So food services is a separate
11 department or division within NYIT?
12 A. Yes. As I described before, Robert
13 has the de Seversky Center and then knows
14 cafeterias, the food services in the student
15 buildings that report up to him as well.
16 Q. This is related to the non de Seversky
17 part that Mr. Rizzuto is responsible for?
18 A. Correct.
19 Q. Do you have any idea why he sent it to
20 you on October 19th?
21 A. I don't specifically recall, but it
22 would help me understand the structure underneath
23 Len Aubrey and his most senior people.
24 MR. FILOSA: Please mark this as
25 Jablonsky Exhibit 4.

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1 C. Jablonsky
2 (Jablonsky Exhibit 4, a two-page
3 document Bates stamped D 03305 through 06,
4 marked for identification, as of this date.)
5 Q. Now you have been shown a document
6 that's been marked as Jablonsky Exhibit 4. It is
7 a two-page document Bates stamped D 03305 through
8 06. Please review it and let me know when you are
9 ready.
10 A. Okay.
11 Q. This is like Jablonsky 3. It is an
12 e-mail with an attachment that was sent to you by
13 Mr. Rizzuto; is that correct?
14 A. Yes.
15 Q. And it indicates it was sent on Monday
16 October 19, 2009 at 2:11 p.m.?
17 A. Yes.
18 Q. And it attaches an organizational
19 chart for the de Seversky Center?
20 A. Yes.
21 Q. Was it your understanding this was the
22 organizational chart before or after the
23 reorganization?
24 A. I don't think I knew at the time
25 necessarily what he meant it to be.

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1 C. Jablonsky
2 Q. And your meeting with him was at 2:30?
3 A. Yes.
4 Q. So he sent this in advance of that
5 meeting.
6 Did you discuss this at the meeting?
7 A. Not specifically, no.
8 Q. Do you know why -- strike that.
9 If you look at page 2 of the exhibit,
10 the organizational chart, at the top is Anthony
11 Baffo, general manager?
12 A. Yes.
13 Q. So would this be fair to say it was
14 before the reorganization?
15 A. Yes.
16 Q. Because if it was after he wouldn't be
17 at the top of the organizational chart?
18 A. Correct.
19 Q. And did you have any understanding as
20 to whether or not Mr. Rizzuto had drafted an
21 organizational chart for the restructure or
22 reorganized de Seversky Center prior to your
23 meeting?
24 A. No. That would have been discussed at
25 the meeting.

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1 C. Jablonsky
2 Q. Were you surprised that one hadn't
3 been drafted prior to your meeting?
4 A. I didn't know whether one had or had
5 not.
6 Q. But the fact that -- strike that.
7 One wasn't drafted though prior to the
8 meeting?
9 A. I don't know that.
10 Q. If Mr. Rizzuto hadn't drafted an
11 organizational chart prior to that meeting, would
12 you have been surprised?
13 A. Could you ask the question again?
14 Q. If Mr. Rizzuto had not drafted any
15 reorganizational chart for the de Seversky Center
16 prior to your October 19th meeting, would you have
17 been surprised by that?
18 A. I can't say it would have surprised or
19 not surprised me.
20 Q. If this was a done deal already, would
21 you have expected a new organizational chart would
22 have been drafted prior to the deal being done?
23 A. No. Based on what I have seen at
24 NYIT, organization charts are not maintained or
25 maintained well.

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1 C. Jablonsky
2 Q. Turning back to Jablonsky Exhibit 1,
3 it indicates at paragraph 4 that you met with Mr.
4 Rizzuto on October 19, 2009?
5 A. Yes.
6 Q. What did you discuss at this meeting
7 with him?
8 A. I asked him for anything and
9 everything he may have in connection with this so
10 I could gather the information, present it to the
11 general counsel.
12 Q. And did he indicate what he had, what
13 existed at that time?
14 A. Not that I remember outlining specific
15 documents, no.
16 Q. So did you ask him to provide
17 anything?
18 A. I asked him to provide whatever he
19 had. I don't remember the specific words, but I
20 would have asked him if he had Len Aubrey's
21 approval because as I said, coming from a business
22 unit that has to be done before HR would get
23 involved.
24 Q. And did he say whether or not he had
25 Len Aubrey's approval -- strike that.

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1 C. Jablonsky

2 Did you ask him to prepare a memo
3 outlining the changes?

4 A. I had asked him for that information.

5 Q. Do you know whether or not a memo had
6 been prepared prior to your meeting?

7 A. I don't know when it was prepared.

8 Q. Did you ask him to prepare one?

9 A. I asked him for the information. I
10 didn't specifically give him the format that it
11 needed to be presented in.

12 Q. When you said you asked him for the
13 information, did you ask him to put it in writing?

14 A. Yes.

15 Q. Did you have any understanding as to
16 whether or not he had put all the information in a
17 writing prior to your meeting?

18 A. I don't know.

19 Q. But he didn't indicate that he had,
20 did he?

21 A. Not that I remember. I remember
22 trying to gather information and asking for
23 information. I don't recall at that meeting
24 specifics of what was, wasn't new.

25 Q. You go on to say in the second

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1 C. Jablonsky

2 sentence of paragraph 4: I reviewed these
3 materials and made some changes for presentation
4 to NYIT's general counsel Stephen Kloepfer.

5 A. Mm-hmm.

6 Q. Do you see that?

7 A. Yes.

8 Q. When you say you reviewed these
9 materials, did Mr. Rizzuto provide with you these
10 materials at the meeting?

11 A. Not at the meeting.

12 Q. He provided them after the meeting?

13 A. Correct.

14 Q. What did he provide you?

15 A. I don't recall all the specifics, but
16 it would have been the approval from Len. It
17 would have been some information regarding the
18 reorganization and based on going backwards it was
19 the organization charts.

20 Q. So that would have been the approval
21 from Len, a memo outlining the reorganization?

22 A. Yes.

23 Q. As well as a reorganizational chart?

24 A. Yes.

25 Q. You indicated that you made some

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1 C. Jablonsky

2 suggested changes.

3 Did you make the changes or did you
4 just suggest them and Mr. Rizzuto to make?

5 A. I would suggest them to Mr. Rizzuto.

6 Q. What changes did you suggest?

7 A. I don't remember specifically, but
8 Robert is not the best writer. I am sure there
9 were misspellings. I am sure there were clauses
10 instead of sentences. That type of thing.

11 So it would have been to just put it
12 in a structure that I would feel comfortable
13 presenting to the general counsel.

14 Q. Do you recall suggesting any
15 substantive changes to the content of the memo
16 outlining the reasons for the reorganization?

17 A. No.

18 Q. And what about the org chart, did you
19 suggest any changes to the org chart?

20 A. No.

21 Q. You go on to say: I received the
22 updated materials on Tuesday, October 20, 2009 and
23 forwarded the information to Mr. Kloepfer.

24 Do you see that?

25 A. Yes.

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1 C. Jablonsky

2 Q. Do you recall how you received the
3 updated materials?

4 A. No.

5 MR. FILOSA: Please mark this as
6 Jablonsky Exhibit 5.

7 (Jablonsky Exhibit 5, a three-page
8 document Bates stamp D 03302 through 04,
9 marked for identification, as of this date.)

10 Q. Miss Jablonsky, you have been showed a
11 document marked as Jablonsky Exhibit 5. It is a
12 three-page document Bates stamp D 03302 through
13 04. Please review it and let me know when you are
14 ready.

15 A. Okay.

16 Q. Now the first page of this document is
17 an e-mail attaching a two-page document; is that
18 correct?

19 A. Yes.

20 Q. This is the e-mail from Mr. Rizzuto
21 sent on October 20, 2009 at 12:25 p.m.; is that
22 correct?

23 A. Yes.

24 Q. And in the e-mail on top Mr. Rizzuto
25 says: Carol, attached is the memo that you

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1 requested. Please let me know if it is
2 informative enough to move forward.

3 Now Mr. Rizzuto said attached is the
4 memo that you requested. Do you recall whether or
5 not you requested Mr. Rizzuto to provide a
6 memorandum?

7 A. I don't recall, no.

8 Q. Do you know whether or not he drafted
9 this previously or had drafted it in the 20 hours
10 since your meeting the day before?

11 A. I don't know.

12 Q. Mr. Rizzuto appears to indicate that
13 you requested that he provide this information.

14 Did you tell him what information was
15 needed?

16 A. I don't recall. I don't recall what I
17 would have asked for.

18 Q. Do you recall giving him any other
19 guidance as to what information was required or
20 what was necessary?

21 A. I don't recall specifically having
22 that conversation, but I would have asked for
23 information regarding the reason for the
24 reorganization, what the reorganization was. That

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C. Jablonsky

1 would have been what I would have asked for, but I
2 don't remember a specific conversation.

3 Q. Now turning to page 2 of the memo.

4 A. Mm-hmm.

5 Q. Mr. Rizzuto is -- this memo is
6 addressed to you; correct?

7 A. Yes.

8 Q. Did Mr. Rizzuto need your approval in
9 order to move forward with the reorganization?

10 A. He needed to go through human
11 resources, but that simply is a conduit to get
12 into the general counsel. So it is a required
13 step, but I wouldn't call it an approval.

14 Q. I am trying to get an understanding
15 why he addressed the memo to you as opposed to
16 general counsel.

17 A. Because I would be the one presenting
18 it to the general counsel as an action.

19 Q. Now turning to the first line of the
20 memo it states: With continued uncertainty
21 regarding the economy.

22 Do you know what Mr. Rizzuto meant
23 when he said by continued uncertainty regarding
24 the economy?

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C. Jablonsky

1 A. I don't know specifically what he
2 meant.

3 Q. Do you know did you ever discuss with
4 him what affect any uncertainty regarding the
5 economy could have on the de Seversky Center?

6 A. No. I would not have gotten into the
7 financials with him. That would have been a
8 decision, a discussion within his business unit
9 and that's why we need to have the
10 vice-president's approval on anything before we
11 would get involved.

12 Q. My question though is: He didn't
13 discuss with you what affect any uncertainty
14 regarding the economy would have on the de
15 Seversky Center?

16 A. No.

17 Q. And you never asked him what he meant
18 by that?

19 A. No.

20 Q. Turning to the second sentence Mr.
21 Rizzuto indicates: It is my feeling that we will
22 continue to feel pressure through fiscal 2010.

23 Did you have any understanding as to
24 what Mr. Rizzuto meant by that?

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C. Jablonsky

1 A. No.

2 Q. Did he ever explain to you what he
3 meant by that we will continue to feel pressure
4 through fiscal 2010?

5 A. No.

6 Q. Did you ever ask him what he meant by
7 that?

8 A. No.

9 Q. Did you have any understanding as to
10 whether or not revenue at the de Seversky Center
11 was up or down compared to the prior year?

12 A. No.

13 Q. Did Mr. Rizzuto ever discuss whether
14 or not revenue was up or down compared to the
15 prior year?

16 A. Discussed, no.

17 Q. Was it your understanding that he was
18 concerned that revenue would go down as a result
19 of this economic uncertainty?

20 A. I know he is concerned with his bottom
21 line, but other than that I don't have any
22 specifics.

23 Q. And the goal of this reorganization
24 was to cut some expenses to effect the bottom

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 2 line; is that a fair statement?

3 A. That I don't know.

4 Q. Did Mr. Rizzuto ever express to you or
 5 discuss with you whether or not that was one of
 6 the goals of the reorganization was to cut the
 7 expenses?

8 A. No.

9 Q. Turning to the last sentence of this
 10 paragraph it indicates: That the following
 11 recommendations with regards to consolidations;
 12 will provide us with favorable profit margins even
 13 with lower revenue numbers for fiscal 2010/2011.

14 Do you see that?

15 A. Yes.

16 Q. Did you have any understanding as to
 17 how the recommendations which would follow would
 18 affect the de Seversky Center's profit margins?

19 A. No.

20 Q. Did Mr. Rizzuto ever explain how these
 21 recommendations would affect the de Seversky
 22 Center's profit margins?

23 A. No.

24 Q. Do you know whether or not these
 25 changes would have resulted in lower costs to the

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1 C. Jablonsky
 2 de Seversky Center?

3 A. No.

4 Q. Did you ever discuss, did Mr. Rizzuto
 5 ever discuss with you whether or not these changes
 6 would result in lower costs?

7 A. No.

8 Q. Is it your understanding that --
 9 strike that.

10 Do you have any understanding as to
 11 whether or not if these changes didn't lower
 12 costs, how it could affect the profit margins at
 13 the de Seversky Center?

14 A. Human resources is not involved in
 15 that part. So no, I don't understand.

16 Q. Who would have been involved in that
 17 part of it?

18 A. Len Aubrey.

19 Q. Did you ever question whether or not
 20 these recommendations would meet those goals?

21 A. No.

22 Q. From your position, was it a function
 23 of HR to ask any of those questions?

24 A. No.

25 Q. HR's function was simply to act as a

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 2 conduit from the vice-president of the business
 3 unit to the general counsel; is that fair to say?

4 A. Yes.

5 Q. And why was the general counsel's
 6 approval needed for any reorganization?

7 A. NYIT's practice is that the general
 8 counsel is made aware of any termination of
 9 employment.

10 Q. But what about if a reorganization
 11 doesn't involve a termination of employment, would
 12 the general counsel need to be involved?

13 A. No.

14 Q. So only when a reorganization includes
 15 a termination is the general counsel involved?

16 A. That the general counsel must be
 17 involved. As the director of HR I had made it a
 18 practice to give him an FYI when other things are
 19 going on, but there would be no need for an
 20 approval.

21 Q. Do you have any understanding as to
 22 why the general counsel's approval was needed for
 23 any termination?

24 A. No. NYIT's practice.

25 Q. Do you agree with that practice?

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1 C. Jablonsky
 2

3 A. I never thought about it.

4 Q. So going through to the next paragraph
 5 it indicates: My recommendation is to eliminate
 6 the general manager's position and segregate these
 7 responsibilities.

8 Is that consistent with your
 9 understanding of what Mr. Rizzuto's recommendation
 was at that time?

10 A. The use of the word segregate I am not
 11 sure I understand. My understanding was to
 12 eliminate the general manager's position and have
 13 other people pick up those parts.

14 Q. And did Mr. Rizzuto explain why he was
 15 selecting to eliminate the general manager's
 16 position versus another position?

17 A. No.

18 Q. Did you ask why the GM position versus
 19 another position?

20 A. No.

21 Q. Do you know if Mr. Rizzuto considered
 22 eliminating other positions other than the general
 23 manager position?

24 A. I don't know.

25 Q. Now going through the next paragraph,

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1 revise the memorandum?

2 A. I don't recall, but there is more
3 information in the second one than the first.

4 Q. Did you ask that he provide more
5 information?

6 A. I don't recall, but I would have to
7 assume.

8 Q. Now if you could turn to page 2, I
9 just want to compare Jablonsky 6 and 5. If you
10 compare page 2 of each you will see -- looking at
11 the second paragraph, you will see the second
12 paragraph has some additional information there?

13 A. Yes.

14 Q. And specifically whereas Jablonsky 5
15 just says: My recommendation is to eliminate the
16 general manager's position and segregate these
17 responsibilities.

18 Jablonsky Exhibit 6 says: My
19 recommendation is to eliminate the general
20 manager's position currently held by Anthony
21 Baffo; and then goes on.

22 Did you recommend -- strike that. Did
23 you ask Mr. Rizzuto to make this change?

24 A. I don't recall, but I would assume so.

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1 Q. And then the sentence goes on: And
2 use the funds to create the dining room captain/
3 sales associate position.

4 Did you ask Mr. Rizzuto to include
5 that information in the memo?

6 A. I don't recall, but I assume so.

7 Q. Do you know why you would have asked
8 him to include that information?

9 A. If I asked specifically it would have
10 been to give more information, more specific
11 information about his plan.

12 Q. At the meeting of the Friday before
13 had Mr. Rizzuto and Mr. Aubrey discussed using the
14 funds from eliminating the GM position to create
15 the dining room captain and sales associate
16 position?

17 A. Not that I remember. I was not
18 focused on the funding aspects on it, of it.

19 Q. But it was clear to you they made the
20 decision to eliminate the general manager
21 position?

22 A. Yes. That position was no longer
23 going to be part of the structure.

24 Q. And then in -- do you recall turning

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1 now to the meeting on the 19th, do you recall
2 discussing with Mr. Rizzuto whether or not the
3 money that was saved from eliminating the general
4 manager position would be used for these specific
5 functions, the dining room captain and the sales
6 associate position?

7 A. The 19th is Monday?

8 Q. Yes.

9 A. I don't recall, but human resources
10 does not get involved with the funding of these
11 actions. Our finance budget function would.

12 Q. I understand that. My question is
13 whether or not you discussed not where the money
14 would come from or approving the funding, but just
15 using that money to fund these positions or assign
16 some of those duties to these positions.

17 Was there any discussions about these
18 specific job positions?

19 A. We didn't discuss money.

20 Q. What I am trying to understand is when
21 there was first a discussion about creating these
22 specific positions, the dining room captain and
23 the sales associate position, whether it was
24 discussed first at the October -- the Friday,

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1 October 16th meeting or the Monday, October 19th
2 meeting.

3 A. Again, I am sorry because I was new
4 that week. Whether or not somebody used a
5 specific title during that meeting or -- I came
6 away with the general concept I can't say what
7 specific titles or even names may have been used
8 at that point.

9 Q. Now there is another two sentences
10 that are added in there which state: Also, I
11 would like to give our sales manager Eric Redlich
12 responsibility of overseeing the daily operations
13 of the de Seversky Center. I can fund all three
14 of these positions through the elimination of the
15 general manager position.

16 Do you have any understanding as to
17 why this information was added to the memo?

18 A. No. It would be a further explanation
19 of the action.

20 Q. And did you have any understanding as
21 to whether or not Mr. Rizzuto would be able to
22 fund all three -- strike that. The sentence says:
23 I can fund all three of these positions through
24 the elimination of the general manager position.

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1 C. Jablonsky
2 A F T E R N O O N S E S S I O N .
3 (1:36 p.m.)
4 C A R O L J A B L O N S K Y ,
5 having been previously sworn, resumed the
6 stand and testified further as follows:
7 EXAMINATION (Cont'd)
8 BY MR. FILOSA:
9 Q. Miss Jablonsky, before the break we
10 had been talking about, I think your meeting with
11 Mr. Rizzuto from Monday, October 19, 2009. In the
12 meeting with Mr. Rizzuto you discussed again the
13 reorganization of the de Seversky Center and the
14 decision to eliminate the general manager
15 position.
16 In that meeting did you discuss with
17 Mr. Rizzuto again the reasons for the
18 reorganization, the financial reasons that
19 underlie his request or recommendation for the
20 reorganization?
21 A. No. My meeting with him would have
22 focused on the HR aspects. It would just be me
23 getting the approval from Stephen creating the
24 documents, me getting the communication.
25 Q. So you weren't necessarily concerned

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1 C. Jablonsky
2 at that point about the reasons for the
3 organization or you didn't discuss the reasons at
4 that meeting?
5 A. No. It was just I received approval
6 from the vice-president. That part of it is
7 finished.
8 Q. So Mr. Baffo's performance as general
9 manager wasn't discussed during this meeting, was
10 it?
11 A. No.
12 Q. Following your meeting with Mr.
13 Rizzuto on the 19th, and we went through some of
14 the documents that were exchanged on the 20th, you
15 then met with Mr. Kloepfer; correct?
16 A. Yes.
17 Q. And that was on -- do you recall that
18 was on October 20, 2009?
19 A. I don't recall specifically. I think
20 so, but I don't recall specifically.
21 Q. Going back to the affidavit that we
22 have been going through Jablonsky 1, at the end of
23 paragraph 4 you indicated that you received the
24 updated materials on Tuesday October 20, 2009 and
25 forwarded the information to Mr. Kloepfer?

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1 C. Jablonsky
2 A. Yes.
3 Q. Do you know whether or not you
4 forwarded it to him the same day you received it
5 or whether or not it was some point after?
6 A. I don't recall.
7 Q. But going on to paragraph 5 you
8 indicate you received approval from Mr. Kloepfer
9 and had Corina Hendea -- this is the Associate
10 Director of HR that we talked about a little
11 earlier today; correct?
12 A. Yes.
13 Q. And you had her prepare the standard
14 severance agreement that NYIT presents to an
15 employee whose position is being eliminated
16 through reorganization.
17 Do you see that?
18 A. Yes, I see that.
19 Q. So you received approval from Mr.
20 Kloepfer.
21 When did you receive this approval
22 from him?
23 A. I don't recall which day it was.
24 Q. How did you receive this approval from
25 him?

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1 C. Jablonsky
2 A. I don't recall, but I think it was via
3 e-mail.
4 Q. Did he sign any memorandum or document
5 approving the reorganization?
6 A. Not to my knowledge.
7 Q. But do you recall receiving the e-mail
8 from him indicating his approval of the
9 reorganization?
10 A. I remember getting approval. I think
11 it was via e-mail, but I do remember having
12 approval before taking the next steps.
13 Q. Did you discuss the reorganization
14 with Mr. Kloepfer in person at some point?
15 A. Yes.
16 Q. Did you discuss it with him at that
17 meeting? In your prior e-mails you indicated it
18 was scheduled for 3 o'clock that day.
19 A. I don't know if it was at that meeting
20 or subsequent.
21 Q. But you remember discussing with him
22 in person?
23 A. Yes.
24 Q. And what did you explain to him about
25 the reorganization?

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1 A. Just the general overview that it was
 2 a reorganization. That Len Aubrey had already
 3 approved the plan and that there was one position
 4 that we needed to create a severance agreement
 5 for.

6 MR. SPARBER: Before we go to the next
 7 question, I just repeat what I said before
 8 which is we do believe that conversations
 9 with Mr. Kloepfer that are not privileged
 10 and confidential that Miss Jablonsky will
 11 testify with respect to those, but I do
 12 reserve the right at various times if there
 13 is something that deems to be confidential
 14 to object at that time.

15 MR. FILOSA: That's fine. It is not
 16 our position that Miss Jablonsky in talking
 17 about these conversations somehow waived the
 18 privilege. I will leave it to you to
 19 distinguish what you believe to be a
 20 privileged conversation and what is not.

21 I may continue asking my questions
 22 under the assumption -- I am just going to
 23 keep going with the questions. If at any
 24 point you are concerned about privilege,

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please let me know.

MR. SPARBER: I will.

6 MR. FILOSA: My intent is not to get
 7 to privileged communications, but in a
 8 situation like this I am just going to
 9 continue to ask the questions until you tell
 10 me I am at a privileged point.

MR. SPARBER: Okay.

11 MR. FILOSA: So is there a question
 12 pending?

(Record read.)

13 Q. Did Mr. Kloepfer have any questions
 14 about the reorganization?

15 A. I don't recall. He would have
 16 clarified anything he didn't understand, but I
 17 don't recall specific questions.

18 Q. Do you remember anything, any part of
 19 your discussion with Mr. Kloepfer other than what
 20 you had testified to that you summarized in your
 21 summary of the reorganization?

22 A. No. I don't remember there being any
 23 issues or concerns raised. It was merely
 24 transmitting the information to him and him then
 25 responding.

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1 Q. And do you recall what his response
 2 was?

3 A. He approved the action.

4 Q. Do you recall if it was in this
 5 meeting or if it was some point thereafter?

6 A. I don't recall. Chances are it was
 7 verbal during the meeting and then followed up by
 8 an e-mail.

9 Q. Is that something that would be
 10 required, some type of written approval under the
 11 general NYIT practices?

12 A. Yes, but it could be as simple as an
 13 okay. A memo is presented or e-mail is presented
 14 this is what it was, you know. Unless you object
 15 this is what we are going to do and then you get
 16 an okay back. That's an approval.

17 Q. You indicate in your affidavit that
 18 you had Corina Henda prepare the standard
 19 severance agreement that NYIT presents to an
 20 employee whose position is being eliminated
 21 through reorganization.

22 Do you know where Miss Henda got the
 23 standard severance agreement?

24 A. No. I don't whether she had it -- I

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1 don't know how she had it saved.

2 Q. And do you know who -- did you
 3 determine that the severance agreement was
 4 necessary?

5 A. No, but it is standard operating
 6 procedure in a situation like this. With prior
 7 employers I would have used one and I would have
 8 assumed that there would have been one to use, but
 9 I didn't make the specific decision in this
 10 specific case to use a severance agreement.

11 Q. Did anyone, did Mr. Aubrey ask or
 12 mention a severance agreement at any point during
 13 your discussions about the reorganization?

14 A. Not that I recall. There may have
 15 been a general conversation about this is a
 16 severance type of situation, but that's as far as
 17 it would have gone.

18 Q. Do you know whether or not you
 19 discussed with Mr. Rizzuto any need for a
 20 severance agreement as part of this reorganization
 21 and elimination of Mr. Baffo's job?

22 A. Again, I think it would have been that
 23 very general conversation because the presumption
 24 is that a situation like this would need one.

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1 C. Jablonsky
2 identification, as of this date.)

3 Q. You have been shown a document marked
4 as Jablonsky Exhibit 10. It is a one-page
5 document Bates stamped D 08408. Please review it
6 and let me know when you are ready.

7 A. Okay.

8 Q. Have you ever seen this document
9 before?

10 A. Yes.

11 Q. Do you know what it is?

12 A. Yes. It is the talking points that I
13 prepared.

14 Q. So you drafted this?

15 A. Yes, based on Robert's words.

16 Q. And did you provide this to Mr.
17 Rizzuto?

18 A. Yes.

19 Q. How did you give it to him?

20 A. I don't recall.

21 Q. You don't know if you printed it and
22 handed it to him or e-mailed it to him?

23 A. I don't know.

24 Q. Did you find this in the documents
25 when you were searching your computer?

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1 C. Jablonsky

2 A. I don't remember if I found it or if
3 it was found on the electronic gathering of the
4 documents.

5 Q. So is it fair to say, that this is a
6 combination of your words and Mr. Rizzuto's words
7 or would you characterize it more as you simply
8 wrote down what he said?

9 A. I wrote down what he said and tried to
10 put it in complete sentences and order of thought
11 to lead up to my part.

12 Q. So the substance of all this is, was
13 all provided to you by Mr. Rizzuto?

14 A. Yes.

15 Q. You just cleaned it up and put it in
16 -- formatted it?

17 A. Yes.

18 Q. Looking at the second sentence, the
19 first paragraph it says: As you know we have been
20 under a lot of economic pressure lately and we
21 need to look at ways to make this operation more
22 cost effective.

23 Are those Mr. Rizzuto's words?

24 A. Yes.

25 Q. And --

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2 A. Just not necessarily that exact word
3 in that exact -- you know what I mean. It is his
4 thought.

5 Q. In sum and substance those are his
6 words?

7 A. Yes.

8 Q. Now did he explain to you what he
9 meant by, in sum and substance, we have been under
10 a lot of economic pressure lately?

11 A. No.

12 Q. Did you ask him whether or not the de
13 Seversky Center had been under a lot of economic
14 pressure lately?

15 A. No.

16 Q. So he said that there was and you
17 accepted that as true?

18 A. Yes.

19 Q. And it goes on: We need to look at
20 ways to make this operation more cost effective.

21 Did you have any understanding as to
22 what Mr. Rizzuto meant when he said in sum and
23 substance that?

24 A. No.

25 Q. Did you ask him what he meant by that?

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1 C. Jablonsky

2 A. No.

3 Q. Did you have any understanding as to
4 whether or not the reorganization would make the
5 de Seversky Center more cost effective?

6 A. No.

7 Q. Did you ask how the reorganization
8 could make the de Seversky Center more cost
9 effective?

10 A. No.

11 Q. Did Mr. Rizzuto ever explain how the
12 reorganization would make the de Seversky Center
13 more cost effective?

14 A. No.

15 Q. Now you go on to say: Len and I have
16 been looking at the structure for quite a while
17 now and decided that a reorganization is needed to
18 help accomplish our goals. We put some part of
19 the plans into effect already, but unfortunately
20 part of this plan includes elimination, your
21 position of general manager.

22 Do you see that?

23 A. Yes, I do.

24 Q. And when it says Len and I, that is
25 referring to Mr. Aubrey and Mr. Rizzuto?

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1 C. Jablonsky
2 A. Yes.
3 Q. Now do you have any understanding as
4 to what Mr. Rizzuto meant in sum and substance
5 that they have been looking at the structure for
6 quite a while?
7 A. Not specifically. Just referring to
8 those other positions that he had mentioned prior
9 that they were recruiting for.
10 Q. Do you know for how long they had been
11 thinking about it?
12 A. No.
13 Q. And Mr. Rizzuto didn't say how long he
14 had been thinking about it?
15 A. Not specifically.
16 Q. And when you say or -- sorry.
17 When you write based on Mr. Rizzuto's
18 words we have put some parts of this plan into
19 effect already, do you know what that is a
20 reference to?
21 A. My understanding of it is that it is
22 those two positions that had already started to be
23 recruited for.
24 Q. That's the dining room captain
25 position and the sales associate position that we

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1 C. Jablonsky
2 talked about that were in your affidavit?
3 A. I don't know for sure if those were
4 the two that were recruited for.
5 Q. And then it goes on: Considering the
6 economic climate and pressures, we are able to
7 offer you an enhanced severance to help you with
8 this transition.
9 Are those Mr. Rizzuto's words in sum
10 and substance or something you added?
11 A. That would be something that Robert
12 Rizzuto was aware of that we were going to use the
13 package that had been used that prior summer. So
14 the word enhanced severance would not have been a
15 word that would have come out of his mouth without
16 hearing it from us.
17 Q. But did you ever discuss with Mr.
18 Rizzuto whether an enhanced severance was
19 necessary or appropriate?
20 A. I would have told him that that's what
21 was going to be done in this situation.
22 Q. Do you know when you were scheduled to
23 meet with Mr. Baffo on the morning of Friday the
24 23rd?
25 A. Not specifically. I know it was in

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1 C. Jablonsky
2 the morning, but I don't remember the time.
3 Q. And did you ever meet with Mr. Baffo
4 that morning?
5 A. No.
6 Q. Why not?
7 A. I got a phone call from Robert Rizzuto
8 telling me that he had had a conversation with
9 Anthony and that Anthony told him that he was HIV
10 positive.
11 Q. And what specifically did Mr. Rizzuto
12 say?
13 A. I don't remember the specific words
14 that was -- just the gist of it that he had come
15 in that morning and given him that information.
16 Q. Did that concern you in any way?
17 A. It gave me pause to think about should
18 it affect it, could it affect it? What do we do
19 now? Do we go ahead with the plan as stated?
20 Q. What affect would Mr. Baffo's HIV
21 status have on the plan?
22 A. Not necessarily the status. Just that
23 there was now new information into the situation
24 that I had not heard before.
25 Q. Now did Mr. Rizzuto tell you -- strike

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1 C. Jablonsky
2 that.
3 Do you know when that phone call was?
4 A. It was before the meeting. I am not
5 sure specifically, but it was definitely prior
6 to -- de Seversky is at a different part of the
7 campus. I had not yet left my office for the trip
8 to de Seversky.
9 Q. How long is the trip from your office
10 to de Seversky?
11 A. It's only five minutes, but it is
12 still get in the car and go over there.
13 Considering I just started, I didn't know where I
14 was going and it's like go through a parking lot,
15 down a hill. So I probably would have left myself
16 ten.
17 Q. And do you know when the meeting was
18 scheduled for?
19 A. It was in the morning. I can't tell
20 you if it was 8:30, 9:30, 10.
21 Q. And did Mr. Rizzuto say what Mr. Baffo
22 had told him?
23 A. As I said, he said that Anthony had
24 come in and told him that he was HIV positive. I
25 don't remember the specific words to it, but that

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1 C. Jablonsky
2 was the gist of the conversation.
3 Q. And did you say anything in response
4 to Mr. Rizzuto?
5 A. I said okay. Hold off. Let me talk
6 to Steve Kloepfer.
7 Q. Why did you tell him to hold off?
8 A. Because this was a new piece of
9 information we didn't have before.
10 Q. What affect would that new piece of
11 information have that would have made you hold
12 off?
13 A. I wasn't sure which is why I wanted to
14 talk to Steve who was the general counsel about
15 whether or not this would change anything.
16 Q. Now did Mr. Rizzuto say whether or not
17 he had discussed Mr. Baffo's HIV status prior to
18 that day?
19 A. Not during that conversation, no. Not
20 at that point.
21 Q. Did he say anything else about what
22 Mr. Baffo had told him in this first phone
23 conversation? Did Mr. Rizzuto say anything else
24 about what Mr. Baffo had told him?
25 A. No. That was a very quick

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1 C. Jablonsky
2 conversation.
3 Q. What did you do after you spoke to Mr.
4 Rizzuto?
5 A. Tried to contact Steve Kloepfer.
6 Q. Why did you want to contact Mr.
7 Kloepfer?
8 A. Because I wasn't sure if and how this
9 would change what NYIT was going to do going
10 forward.
11 Q. And did you ultimately contact Mr.
12 Kloepfer?
13 A. Yes.
14 Q. And do you know when you spoke with
15 him -- strike that.
16 Did you speak with him?
17 A. Yes.
18 Q. Do you know when you spoke with him?
19 A. Not the specific time of day, no.
20 Q. Do you know whether it was that day?
21 A. Yes. It was that morning, but I don't
22 know what time.
23 Q. Do you know if you spoke to him in
24 person or over the phone?
25 A. In person.

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1 C. Jablonsky
2 Q. What did you discuss with Mr.
3 Kloepfer?
4 DI MR. SPARBER: Okay. I am now
5 interposing an objection. For the record, I
6 think that at this point in time, just
7 generally speaking, Mr. Kloepfer's job has
8 sort of changed; his business hat to his
9 legal hat. He is now dispensing legal
10 advice rather than business advice and I
11 would caution you not to at the moment do it
12 and not I am directing the witness at this
13 point not to answer that question.
14 Q. Are you going to follow your
15 attorney's instruction and not answer the
16 question?
17 A. Yes.
18 Q. Would you be able to answer this
19 question had your attorney not instructed you not
20 to answer it?
21 A. What do you mean by be able?
22 Q. Do you recall what you discussed with
23 Mr. Kloepfer?
24 A. In general.
25 Q. So if your attorney had not instructed

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1 C. Jablonsky
2 you not to answer the question you would be able
3 to provide some type of substantive answer to my
4 question?
5 A. I would be able to.
6 Q. That's all I was asking. It is a
7 procedural thing.
8 A. Mm-hmm.
9 Q. So ultimately you met with Mr.
10 Kloepfer; correct?
11 A. Yes.
12 Q. And what did you do following your
13 meeting with Mr. Kloepfer?
14 A. I don't know if this --
15 MR. SPARBER: You can answer if it
16 doesn't involve actually what you and Mr.
17 Kloepfer talked about. He is asking you
18 what you did after that. So you might very
19 well be able to answer the question.
20 A. Based on that conversation I created a
21 new agreement, new cover letter.
22 Q. And what did this new agreement and
23 new cover letter provide for?
24 A. Enhanced benefits, enhanced severance.
25 Q. Over and above what was on the October

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